

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

October 22, 1998

United States of America,)	
Complainant)	
)	8 U.S.C. §1324b Proceeding
v.)	
)	OCAHO Case No. 97B00039
IBP, Inc.,)	
Respondent.)	
_____)	

FINAL DECISION AND ORDER APPROVING CONSENT FINDINGS

On January 8, 1997, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC/complainant) commenced this action by filing the Complaint at issue on behalf of Ms. Ester Gomez de Sarabia. That initiating pleading alleged that IBP, Inc. (IBP/respondent) violated the provisions of the Immigration Reform and Control Act of 1986 (IRCA), as amended, in the course of Ms. Sarabia's having sought employment at IBP.

More specifically, that Complaint alleged that IBP violated the provisions of 8 U.S.C. §1324b(a)(6) by having wrongfully rejected a valid document produced by Ms. Sarabia for purposes of establishing employment eligibility. OSC assessed a civil money penalty of \$1,000 and initially requested a back pay award for Ms. Sarabia in the amount of \$17,576, plus interest. The amount of back pay was subsequently reduced to \$9,067.76.

On July 16, 1997, OSC's Motion for Summary Decision was granted as to the alleged facts of violation. Resultingly, only the appropriate civil penalty to be assessed for the proven document abuse violation, as well as the correct amount of back pay to be awarded to Ms. Sarabia, then remained at issue.

On September 25, 1998, the parties jointly filed a proposed Consent Order containing consent findings on those two remaining matters.

Under the pertinent rule of the OCAHO Rules of Practice and Procedure, 28 C.F.R. §§ 68.14(a)(1), (b) and (c), where the parties, as here, have submitted a settlement agreement containing consent findings and a proposed decision and order, the Administrative Law Judge may, if satisfied with timeliness, form, and substance thereof, accept such agreement by issuing a decision and order based upon the agreed findings.

It is found that the terms of the consent findings in the parties' Consent Order comply with the applicable regulations and are appropriate in timeliness, form and substance.

Accordingly, it is further found, under the terms of the consent findings and pursuant to 28 C.F.R. §§ 68.14 (b) and (c), that:

1. The Consent Order shall have the same force and effect as a decision and order made after a full administrative hearing;
2. The entire record upon which the Consent Order is based shall consist solely of the Complaint, Notice of Hearing, Respondent's Answer, Complainant's Motion for Summary Decision, Respondent's Resistance to Summary Decision and the Order Granting Complainant's Motion for Summary Decision;
3. The parties have waived any further procedural steps before the Administrative Law Judge;
4. The parties have waived any right to challenge or contest the validity of the Consent Order;
5. Respondent will pay Ester Gomez de Sarabia \$2,000 in back pay. This payment shall be made by a check made out to Ms. Sarabia and delivered to OSC;
6. Respondent will pay a civil penalty in the amount of \$500. This payment shall be made by a check made payable to the U.S. Treasury and delivered to OSC;
7. Respondent will not refuse to honor documentation presented for employment eligibility purposes that on its face reasonably appears to be genuine, relates to the person, and satisfies the requirements of 8 U.S.C. § 1324a(b);
8. Respondent will not request, for purposes of satisfying the employment eligibility verification requirements of 8 U.S.C. § 1324a(b), more or different documents than are required by law;
9. Respondent will allow employees, including non-citizen employees, to present any document or combination of documents acceptable by law for purposes of satisfying the employment eligibility verification requirements of 8 U.S.C. § 1324a(b); and
10. The parties will each bear their own costs, attorneys' fees and other expenses incurred in this action.

In accordance with the foregoing Consent Findings of the parties, IBP is hereby ordered to pay a civil penalty of \$500 and back pay in the sum of \$2,000 in the manner previously agreed upon.

Joseph E. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 22st day of October, 1998, I have served copies of the foregoing Final Decision and Order Approving Consent Findings to the following persons at the addresses shown, in the manner indicated:

Office of Chief Administrative Hearing Officer
Skyline Tower Building
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041
(original hand delivered)

Anita Stephens, Esquire
Office of Special Counsel for Immigration
Related Unfair Employment Practices
P.O. Box 27728
Washington, D.C. 20038-7728
(one copy sent via regular mail)

Rosanne Lienhard, Esquire
IBP, Inc.
P.O. Box 515
Mail #141
Dakota City, NE 68731
(one copy sent via regular mail)

Jeffery C. Westcott
Legal Technician to
Joseph E. McGuire
Administrative Law Judge
Department of Justice
Office of the Chief Administrative
Hearing Officer
5107 Leesburg Pike, Suite 1905
Falls Church, Virginia 22041
(703) 305-1043